

BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of

**HOWARD B. SOMERS, M.D.**

Holder of License No. 11456  
For the Practice of Allopathic Medicine  
In the State of Arizona

Case No. MD-07-1067A

**CONSENT AGREEMENT FOR  
LETTER OF REPRIMAND**

**CONSENT AGREEMENT**

By mutual agreement and understanding, between the Arizona Medical Board ("Board") and Howard B. Somers, M.D. ("Respondent"), the parties agreed to the following disposition of this matter.

1. Respondent has read and understands this Consent Agreement and the stipulated Findings of Fact, Conclusions of Law and Order ("Consent Agreement"). Respondent acknowledges that he has the right to consult with legal counsel regarding this matter.

2. By entering into this Consent Agreement, Respondent voluntarily relinquishes any rights to a hearing or judicial review in state or federal court on the matters alleged, or to challenge this Consent Agreement in its entirety as issued by the Board, and waives any other cause of action related thereto or arising from said Consent Agreement.

3. This Consent Agreement is not effective until approved by the Board and signed by its Executive Director.

4. The Board may adopt this Consent Agreement or any part thereof. This Consent Agreement, or any part thereof, may be considered in any future disciplinary action against Respondent.

5. This Consent Agreement does not constitute a dismissal or resolution of other matters currently pending before the Board, if any, and does not constitute any waiver,

1 express or implied, of the Board's statutory authority or jurisdiction regarding any other  
2 pending or future investigation, action or proceeding. The acceptance of this Consent  
3 Agreement does not preclude any other agency, subdivision or officer of this State from  
4 instituting other civil or criminal proceedings with respect to the conduct that is the subject  
5 of this Consent Agreement.

6 6. All admissions made by Respondent are solely for final disposition of this  
7 matter and any subsequent related administrative proceedings or civil litigation involving  
8 the Board and Respondent. Therefore, said admissions by Respondent are not intended  
9 or made for any other use, such as in the context of another state or federal government  
10 regulatory agency proceeding, civil or criminal court proceeding, in the State of Arizona or  
11 any other state or federal court.

12 7. Upon signing this agreement, and returning this document (or a copy thereof) to  
13 the Board's Executive Director, Respondent may not revoke the acceptance of the  
14 Consent Agreement. Respondent may not make any modifications to the document. Any  
15 modifications to this original document are ineffective and void unless mutually approved  
16 by the parties.

17 8. If the Board does not adopt this Consent Agreement, Respondent will not  
18 assert as a defense that the Board's consideration of this Consent Agreement constitutes  
19 bias, prejudice, prejudgment or other similar defense.

20 9. This Consent Agreement, once approved and signed, is a public record that will  
21 be publicly disseminated as a formal action of the Board and will be reported to the  
22 National Practitioner Data Bank and to the Arizona Medical Board's website.

23 10. If any part of the Consent Agreement is later declared void or otherwise  
24 unenforceable, the remainder of the Consent Agreement in its entirety shall remain in force  
25 and effect.

1 11. Any violation of this Consent Agreement constitutes unprofessional conduct  
2 and may result in disciplinary action. A.R.S. § § 32-1401(27)(r) ("[v]iolating a formal order,  
3 probation, consent agreement or stipulation issued or entered into by the board or its  
4 executive director under this chapter") and 32-1451.

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8 HOWARD B. SOMERS, M.D.

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DATED: 8/28/08

**FINDINGS OF FACT**

1. The Board is the duly constituted authority for the regulation and control of the practice of allopathic medicine in the State of Arizona.

2. Respondent is the holder of license number 11456 for the practice of allopathic medicine in the State of Arizona.

3. The Board initiated case number MD-07-1067A after receiving notification of a malpractice settlement involving Respondent's care and treatment of a sixty year-old male patient ("JH").

4. On September 8, 2005, JH presented to Respondent five years post status epididymectomy and with testicular orchalgia (chronic pain of the testicles). Respondent determined that JH's left testicular orchalgia was refractory to all other treatment and therefore, agreed to perform an orchiectomy (removal of the testicle).

5. On September 26, 2005, Respondent performed the orchiectomy; however, he removed the incorrect testicle. Respondent immediately identified the mistake and discussed it with JH's wife who agreed that Respondent should remove the correct testicle. Respondent proceeded to remove the left testicle which left JH anorchic and with a 90% loss of testosterone production.

6. The standard of care when performing an orchiectomy requires a physician to remove the correct testicle.

7. Respondent deviated from the standard of care by removing the incorrect testicle.

8. JH suffered altered cosmetic appearance of the scrotum and a 90% loss of testosterone production. JH may also experience psychological ramifications from the loss of both testicles.

1 CONCLUSIONS OF LAW

2 1. The Board possesses jurisdiction over the subject matter hereof and over  
3 Respondent.

4 2. The conduct and circumstances described above constitute unprofessional  
5 conduct pursuant to A.R.S. § 32-1401(27)(q) ("[a]ny conduct or practice that is or might be  
6 harmful or dangerous to the health of the patient or the public.").

7 ORDER

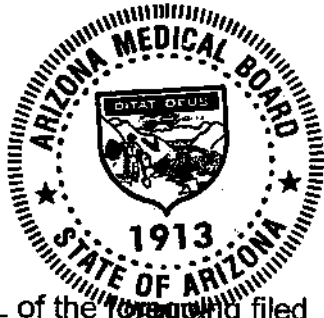
8 IT IS HEREBY ORDERED THAT:

9 1. Respondent is issued a Letter of Reprimand for removing the incorrect  
10 testicle while performing an orchiectomy.

11 2. This Order is the final disposition of case number MD-07-1067A.

12 DATED AND EFFECTIVE this 9<sup>th</sup> day of October, 2008.

13 (SEAL)



ARIZONA MEDICAL BOARD

14 By 

Lisa S. Wynn  
Executive Director

15 ORIGINAL of the foregoing filed  
16 this 9<sup>th</sup> day of October, 2008 with:

17 Arizona Medical Board  
18 9545 E. Doubletree Ranch Road  
19 Scottsdale, AZ 85258

20 EXECUTED COPY of the foregoing mailed  
21 this 9<sup>th</sup> day of October, 2008 to:

22 Howard B. Somers, M.D.  
23 Address of Record

24   
25 Investigational Review